

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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<u>Galitzer v. City of New York, et al.,</u>	05 Civ. 7669 (RJS) (JCF)	<b>ECF CASES</b>
<u>Xu, et al. v. City of New York, et al.,</u>	05 Civ. 7672 (RJS) (JCF)	
<u>Coburn, et al. v. City of New York, et al.,</u>	05 Civ. 7623 (RJS) (JCF)	
<u>Sloan, et al. v. City of New York, et al.,</u>	05 Civ. 7668 (RJS) (JCF)	

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**PLAINTIFFS' OBJECTIONS, PURSUANT TO FED.R.CIV.P. 72, TO MAGISTRATE  
JUDGE FRANCIS' MARCH 27 AND MARCH 28, 2008, ORDERS DISMISSING  
FOUR PLAINTIFFS' CLAIMS FOR EMOTIONAL DISTRESS**

Plaintiffs Gwynn Galitzer in the Galitzer case, David Becker in the Xu (formerly Carney) case, Megan Thomas-Melly in the Coburn case, and Emily Sloan in the Sloan case, were among those unlawfully arrested by the New York City Police Department during the 2004 Republican National Convention (RNC). They have brought actions, *inter alia*, pursuant to 42 U.S.C. § 1983.

**PROCEDURAL HISTORY**

On March 27, 2008, Magistrate Judge James C. Francis, IV dismissed the emotional distress claims of Plaintiffs Gwynn Galitzer and David Becker, and on March 28, 2008 dismissed the emotional distress claims of Plaintiffs Megan Thomas-Melly and Emily Sloan in the above-captioned cases that have been consolidated for discovery purposes with all other RNC actions, stating that these plaintiffs' emotional distress claims were being dismissed as a result of their declination to authorize the production of mental health information to the Defendants. Judge Francis' March 27 and 28, 2008 Orders in Galitzer, Xu (formerly Carney), Coburn, and Sloan, are attached as **Exhibit A**. Plaintiffs now appeal from that decision.

**ARGUMENT**

The issue of the discoverability of plaintiffs' mental health information and waiver (or lack

thereof) of the psychotherapist-patient privilege for claims of garden-variety emotional distress has been hotly litigated in the consolidated RNC litigation, both by myself and other plaintiffs' counsel. Both Magistrate Judge Francis and District Judge Kenneth Karas have continually held that RNC plaintiffs' claims of garden-variety emotional distress waive the psychotherapist-patient privilege, have compelled the production of mental health information from those RNC plaintiffs claiming garden-variety emotional distress, and have dismissed the emotional distress claims of those RNC plaintiffs who have refused to authorize production of mental health information.

Plaintiffs appeal from those rulings.

Plaintiffs Galitzer, Becker, Thomas-Melly, and Sloan rely upon, and incorporate by reference, the Rule 72 Objections (dated November 16, 2007) and reply (dated March 24, 2007), and the exhibits thereto, made recently concerning this same issue in the consolidated RNC cases Phillips, et al. v. City of New York, et al., 05 Civ. 7624 (RJS)(JCF) and Sikelianos v. City of New York, et al., 05 Civ. 7673 (RJS)(JCF), which appealed from a similar Order by Judge Francis dated November 1, 2007 (and which further relied upon and incorporated by reference the briefs on this issue in Adams, et al. v. City of New York, et al., 05 Civ. 9484 (RJS)(JCF), Abdell, et al. v. City of New York, et al., 05 Civ. 8453 (RJS)(JCF), and Tikkun v. City of New York, et al., 05 Civ. 9901 (RJS)(JCF)).

Plaintiffs Galitzer, Becker, Thomas-Melly, and Sloan are similarly situated in all relevant respects with regard to this issue with the Phillips, Sikelianos, Adams, and Abdell plaintiffs who were the subject of those Rule 72 Objections, and the arguments made therein are equally applicable to plaintiffs Galitzer, Becker, Thomas-Melly, and Sloan.

Dated: April 11, 2008  
New York, New York

Respectfully submitted,



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(212) 227-2980  
*Attorney for Plaintiffs*

## **Exhibit A**

GWYNN GALITZER, : 05 Civ. 7669 (RJS) (JCF)  
Plaintiff, :  
- against - :  
THE CITY OF NEW YORK, et al., :  
Defendants. :  
-----:  
JAMES C. FRANCIS IV  
UNITED STATES MAGISTRATE JUDGE

O R D E R

USDS SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #: 3/28/08  
DATE FILED: 3/28/08

Defendants having moved by letter dated January 22, 2008 for an order dismissing plaintiff Gwynn Glitzer's emotional distress and physical injury claims, it is hereby ORDERED as follows:

1. Plaintiff's emotional distress claims are dismissed, as she has declined to execute releases for relevant mental health records.

2. Defendants' application to dismiss plaintiff's physical injury claims is denied. She has produced the relevant treatment records, redacting information concerning unrelated conditions.

SO ORDERED.

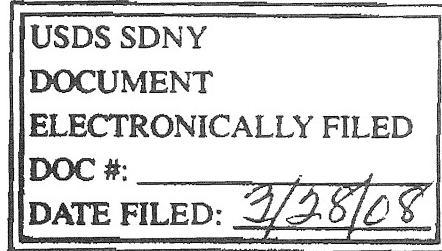
*James C. Francis IV*  
\_\_\_\_\_  
JAMES C. FRANCIS IV  
UNITED STATES MAGISTRATE JUDGE

Dated: New York, New York  
March 27, 2008

Jeffrey A. Rothman, Esq.  
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Randall M. Elfenbein, Esq.  
Assistant Corporation Counsel  
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LASHLEY CARNEY, RANDY XU, DELMAR	:	05 Civ. 7672 (RJS) (JCF)
CONKLIN, DAVID BECKER, SARA	:	
HEIFETZ, CHARITY JAMES, and	:	
HANNAH JANEWAY,	:	<u>O R D E R</u>
	:	
Plaintiffs,		
:		
- against -		
:		
THE CITY OF NEW YORK, et al.,	:	
:		
Defendants.		
:		
JAMES C. FRANCIS IV		
UNITED STATES MAGISTRATE JUDGE		



Defendants having moved by letter dated January 22, 2008 to dismiss certain claims and to compel discovery, it is hereby ORDERED as follows:

1. The emotional distress claims of plaintiff David Becker are dismissed, as he has declined to produce releases for relevant mental health records.
2. Defendants' application to dismiss the emotional distress claims of plaintiff Delmar Conklin is denied. Mr. Conklin provided the information requested of him for the period identified in defendants' interrogatories.
3. Defendants' application to dismiss the emotional distress claims of plaintiff Sara Heifetz is denied. Ms. Heifetz provided the information requested of her for the period identified in defendants' interrogatories.
4. Defendants' application to dismiss the emotional distress claims of plaintiff Charity James is denied for failure to meet and

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confer. By April 15, 2008, Ms. James shall provide the requested releases for the records of Dr. Susan Cross. If there is a dispute concerning whether or how plaintiff should be redeposed, I will address the issue when it is ripe.

5. The emotional distress claims of Randy Xu are dismissed, as he has declined to produce releases for relevant mental health records.

6. By April 15, 2008, plaintiff Randy Becker shall produce the requested release for the records of Dr. Parikh.

7. The defendants' application to dismiss the physical injury claims of plaintiff Charity James is denied. Defendants have failed to identify any health care providers for whom they have not received releases, even though they presumably asked about such providers at plaintiff's deposition.

8. Defendants' application to dismiss the physical injury claims of plaintiff Hannah Janeway is denied. Ms. Janeway has represented that she received no treatment and therefore can provide no releases.

9. By April 15, 2008, plaintiffs David Becker, Delmar Conklin, and Hannah Janeway shall produce releases for non-RNC arrests. Failure of defendants to meet and confer precludes dismissal of the false arrest and emotional distress claims of these plaintiffs.

10. By April 15, 2008, plaintiff David Becker shall produce (a) all documentation of lost income, (b) any CCRB documents, (c) the requested video, and, (d) if he claims physical injury based on

11. By April 15, 2008, plaintiff Charity James shall produce all documentation of lost earnings.

12. By April 15, 2008, plaintiff Hannah Janeway shall produce all documentation of lost income and expenses related to her criminal trial.

13. Defendants' request for an order limiting plaintiff's introduction of clothing as evidence at trial is denied. This issue was improperly raised for the first time in defendants' reply letter. In any event, the application is properly addressed to Judge Sullivan at the time of trial.

SO ORDERED.

  
\_\_\_\_\_  
JAMES C. FRANCIS IV  
UNITED STATES MAGISTRATE JUDGE

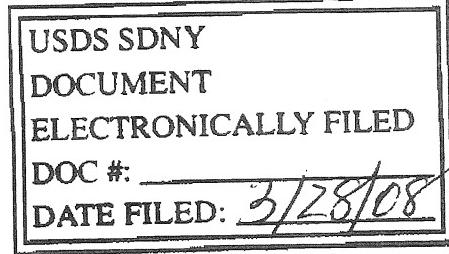
Dated: New York, New York  
March 27, 2008

Copies mailed this date:

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Randall M. Elfenbein, Esq.  
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SARAH COBURN, et al., : 05 Civ. 7623 (RJS) (JCF)

Plaintiffs, :  
:  
:  
- against - :  
:  
:  
CITY OF NEW YORK, et al., :  
:  
:  
Defendants. :  
:  
:  
JAMES C. FRANCIS IV :  
UNITED STATES MAGISTRATE JUDGEO R D E R

Defendants having moved by letter dated January 22, 2008 for an order dismissing certain claims, it is hereby ORDERED as follows:

1. The emotional distress claims of plaintiff Megan Thomas-Melly are dismissed, as she has declined to provide releases for relevant mental health records.

2. Defendants' application to dismiss the emotional distress claims of plaintiff Justin Barron is denied. Mr. Barron's only mental health treatment was provided years after the RNC and is not relevant.

3. Defendants' request for an order limiting plaintiffs' introduction of clothing as evidence at trial is denied. This issue was improperly raised for the first time in defendants' reply letter. In any event, the application is properly addressed to Judge Sullivan at the time of trial.

SO ORDERED.

James C. Francis IV  
JAMES C. FRANCIS IV  
UNITED STATES MAGISTRATE JUDGE

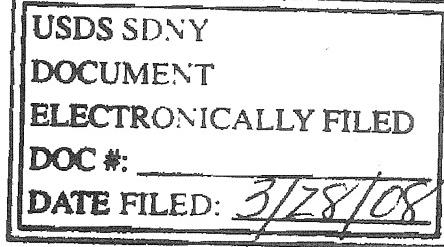
Dated: New York, New York  
March 28, 2008

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EMILY SLOAN, et al., : 05 Civ. 7668 (RJS) (JCF)  
Plaintiffs, :  
: O R D E R  
- against - :  
THE CITY OF NEW YORK, et al., :  
Defendants. :  
-----  
JAMES C. FRANCIS IV :  
UNITED STATES MAGISTRATE JUDGE



Defendants having moved by letter dated January 22, 2008 to dismiss certain claims and to compel discovery, it is hereby ORDERED as follows:

1. Plaintiff Emily Sloan's emotional distress claims are dismissed, as she had declined to execute releases for relevant mental health records.

2. Defendants' application to dismiss plaintiff Steven Weaver's emotional distress claims is denied. The value of further discovery on this issue is marginal. See Fed. R. Civ. P. 26(b)(2)(C)(iii). Some of the information relates to treatment Mr. Weaver received as an preadolescent, and the treatment he received following discharge from Brylin was brief and did not involve medication.

3. Defendants' application to dismiss the emotional distress claims of plaintiffs Robert Lesser, Willard Schulmeister III, Emily Sloan, and Steven Weaver are denied. Mr. Schulmeister, Mr. Lesser, and Mr. Weaver have produced the requested releases for non-RNC arrests, and Ms. Sloan shall do so by April 15, 2008. If there is

counsel may present the issue to me when it is ripe.

4. Defendants' application to dismiss the economic and special damages claims of plaintiffs Christina Aikman, Jason Pelszynski, Robert Lesser, Willard Schulmeister III, Emily Stone, and Steven Weaver is denied. Each plaintiff has represented that he or she has produced all available documentation. In addition, Mr. Schulmeister has withdrawn his claim concerning \$1,500 in financial aid.

5. Defendants' application for an order that Mr. Lesser disclose his tax returns is granted to the extent that by April 15, 2008 he shall produce copies of his federal returns for the years 2002, 2003, and 2004.

6. By April 15, 2008, plaintiff Christina Aikman shall produce the requested journal and photographs. No "privilege log" need be supplied with the journal provided the redactions are made by counsel.

7. By April 15, 2008, plaintiff Jason Pelszynski shall produce the requested photographs and written records concerning the RNC, protest activity, or his arrest.

8. Defendants' request for an order limiting plaintiffs' introduction of clothing as evidence at trial is denied. This issue was improperly raised for the first time in defendants' reply letter. In any event, the application is properly addressed to Judge Sullivan at the time of trial.

James C. Francis IV  
JAMES C. FRANCIS IV  
UNITED STATES MAGISTRATE JUDGE

Dated: New York, New York  
March 28, 2008

Copies mailed this date:

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